

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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JOSE RODRIGUEZ-QUEZADA,

Case No. 3:23-cv-00130-MMD-CLB

Petitioner,

ORDER

v.

KYLE OLSEN, *et al.*,

Respondents.

I. SUMMARY

In his amended 28 U.S.C. § 2254 habeas corpus petition Jose Rodriguez-Quezada challenges his Douglas County, Nevada conviction by a jury of second-degree murder with use of a deadly weapon. (ECF No. 15.) Respondents have filed a motion to dismiss, arguing that two of Petitioner's three claims are unexhausted and would be procedurally barred. (ECF No. 29 ("Motion").)¹ As further explained below, the Court defers a decision on whether Petitioner's ineffective assistance of counsel claim is procedurally barred from federal review to the adjudication of the petition on the merits and declines to dismiss the cumulative error claim at this stage of the proceedings.

II. BACKGROUND**A. State-Court Proceedings**

Jose Rodriguez-Quezada's ("Jose")² convictions arose from an incident where he repeatedly stabbed Kevin Edwards in a South Lake Tahoe casino hotel room, killing him. (ECF No. 25-9.) The state district court sentenced Jose to 10 years to life, with a

¹Rodriguez-Quezada opposed, and Respondents replied. (ECF Nos. 30, 32.)

²The parties refer to Petitioner as "Jose," and the Court does the same.

consecutive term of 8 to 20 years for the deadly weapon enhancement. (ECF No. 25-39.)
Judgment of conviction was entered on October 15, 2019. (ECF No. 25-40.)

The Nevada Supreme Court affirmed Jose's conviction in April 2021. (ECF No. 26-12.) He filed a state postconviction habeas corpus petition alleging 6 grounds for relief. (ECF No. 26-17.) The state district court issued an order setting an evidentiary hearing on Jose's claim that his trial counsel was ineffective for failing to convey a plea agreement offer (ground 3) and denied the other 5 claims. (ECF No. 26-29.) After the hearing the state district court denied ground 3. (ECF No. 26-35.) Jose did not appeal.

B. Federal Habeas Proceedings

Jose initiated a *pro se* federal habeas action in March 2023. (ECF No. 1-1.) The Court granted his motion for appointment of counsel, and he filed a counseled amended petition. (ECF Nos. 6, 15.) He alleges 3 grounds for relief:

Ground 1: The trial court's *Allen* charge violated Jose's right to a fair trial and due process under the Fifth, Sixth, and Fourteenth Amendment rights.

Ground 2: Trial counsel was ineffective in violation of the Sixth and Fourteenth Amendments by:

A. Failing to advise Jose to testify in his own defense.

B. Failing to present evidence of Jose's rib fracture.

Ground 3: Cumulative error prejudiced Jose in violation of his Fifth, Sixth, and Fourteenth Amendment due process and fair trial.

(ECF No. 15 at 4-25.) Respondents now move to dismiss the petition, arguing that grounds 2 and 3 are unexhausted. (ECF No. 29.)

III. DISCUSSION

A. Ground 2

A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted his available state remedies for all claims raised. See *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state courts a fair opportunity to act on each of his claims before he presents those claims in a federal

1 habeas petition. See *O’Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); see also *Duncan*
2 *v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the petitioner has
3 given the highest available state court the opportunity to consider the claim through direct
4 appeal or state collateral review proceedings. See *Casey v. Moore*, 386 F.3d 896, 916
5 (9th Cir. 2004); *Garrison v. McCarthey*, 653 F.2d 374, 376 (9th Cir. 1981).

6 In *Coleman v. Thompson*, the Supreme Court held that a state prisoner who fails
7 to comply with state-law procedural requirements in presenting his claims in state court
8 is barred by the adequate and independent state ground doctrine from obtaining a writ of
9 habeas corpus in federal court. See 501 U.S. 722, 731-32 (1991) (“Just as in those cases
10 in which a state prisoner fails to exhaust state remedies, a habeas petitioner who has
11 failed to meet the State’s procedural requirements for presenting his federal claims has
12 deprived the state courts of an opportunity to address those claims in the first instance.”).
13 Where such a procedural default constitutes an adequate and independent state ground
14 for denial of habeas corpus, the default may be excused only if “a constitutional violation
15 has probably resulted in the conviction of one who is actually innocent,” or if the prisoner
16 demonstrates cause for the default and prejudice resulting from it. *Murray v. Carrier*, 477
17 U.S. 478, 496 (1986).

18 To demonstrate cause for a procedural default, the petitioner must “show that
19 some objective factor external to the defense impeded” his efforts to comply with the state
20 procedural rule. *Murray*, 477 U.S. at 488. For cause to exist, the external impediment
21 must have prevented the petitioner from raising the claim. See *McCleskey v. Zant*, 499
22 U.S. 467, 497 (1991). With respect to the prejudice prong, the petitioner bears “the burden
23 of showing not merely that the errors [complained of] constituted a possibility of prejudice,
24 but that they worked to his actual and substantial disadvantage, infecting his entire
25 [proceeding] with errors of constitutional dimension.” *White v. Lewis*, 874 F.2d 599, 603
26 (9th Cir. 1989) (citing *United States v. Frady*, 456 U.S. 152, 170 (1982)).

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1 In *Martinez v. Ryan*, the Supreme Court ruled that ineffective assistance of
2 postconviction counsel may serve as cause with respect to a claim of ineffective
3 assistance of trial counsel. See 566 U.S. 1 (2012). The *Martinez* Court stated: “Where,
4 under state law, claims of ineffective assistance of trial counsel must be raised in an initial-
5 review collateral proceeding, a procedural default will not bar a federal habeas court from
6 hearing a substantial claim of ineffective assistance at trial if, in the initial review collateral
7 proceeding, there was no counsel or counsel in that proceeding was ineffective.” 566 U.S.
8 at 17; see also *Trevino v. Thaler*, 569 U.S. 413, 423 (2013) (regarding the showing
9 necessary to overcome a procedural default under *Martinez*).

10 Ground 2 is the claim that trial counsel was ineffective for failing to advise Jose to
11 testify in his own defense and for failing to present evidence of his rib fracture. (ECF No.
12 15 at 13-23.) Jose concedes that ground 2 was not presented to state courts. (*Id.* at 13.)
13 He contends that ground 2 is technically exhausted and also procedurally defaulted
14 because the state courts would not consider the claims now due to the state procedural
15 bars. See *Woodford v. Ngo*, 548 U.S. 81 (2002) (state court remedies are “exhausted”
16 when they are “no longer available, regardless of the reason for their unavailability”).

17 Jose insists he can overcome the default of these claims under *Martinez*. To
18 establish cause under *Martinez*, a petitioner needs to show “that he had no counsel during
19 his state collateral review proceeding or that his counsel during that proceeding was
20 ineffective under the standards of *Strickland v. Washington*.” *Rodney v. Filson*, 916 F.3d
21 1254, 1259 (9th Cir. 2019); see also *Martinez*, 566 U.S. at 14. Jose also needs to
22 establish prejudice. He can satisfy the prejudice standard by showing his defaulted claims
23 are “substantial,” for example, that they have “some merit.” *Detrich v. Ryan*, 740 F.3d
24 1237, 1245 (9th Cir. 2013).

25 Jose argues that postconviction counsel was ineffective for failing to raise these
26 claims and that the claims are substantial. (ECF No. 30 at 2-9.) Respondents disagree
27 that these claims are substantial. They also argue that Jose failed to develop the factual
28 basis for ground 2 in state court. The Court concludes that because the question of

1 procedural default is intertwined with the underlying merits of the claims, full merits
2 briefing may assist the Court with its determinations, and best serves judicial efficiency.
3 A decision on whether ground 2 is procedurally defaulted from federal review is deferred.

4 **B. Cumulative Error**

5 The Ninth Circuit Court of Appeals has held that “the combined effect of multiple
6 trial errors may give rise to a due process violation if it renders a trial fundamentally unfair,
7 even where each error considered individually would not require reversal.” *Parle v.*
8 *Runnels*, 505 F.3d 922, 928 (9th Cir. 2007) (first citing *Donnelly v. DeChristoforo*, 416
9 U.S. 637, 643 (1974), then citing *Chambers v. Mississippi*, 410 U.S. 289, 290 n. 3, 298,
10 302-03 (1973)); see also *Killian v. Poole*, 282 F.3d 1204, 1211 (9th Cir. 2002)
11 Respondents argue that Jose never presented a cumulative error claim encompassing
12 all the legal and factual allegations raised in his federal petition to the Nevada appellate
13 courts. (ECF No. 29 at 5.) A cumulative error claim may be exhausted to the extent that
14 the underlying individual claims of error are exhausted. The Court will consider whether
15 it may reach the merits of ground 2 when it adjudicates the merits of the petition. Thus, it
16 is unclear at this time whether there will be multiple claims of error before the Court to
17 potentially cumulate. The Court will consider ground 3 when the parties have completed
18 briefing on the merits.

19 **IV. CONCLUSION**

20 It is therefore ordered that Respondents’ Motion to Dismiss (ECF No. 29) is denied
21 as set forth in this order.

22 It is further ordered that a decision on whether ground 2 is procedurally defaulted
23 is deferred to the merits adjudication.

24 It is further ordered that Respondents have 60 days from the date of this order to
25 file an answer to the petition. The answer must contain all substantive and procedural
26 arguments as to all surviving grounds of the petition and comply with Rule 5 of the Rules
27 Governing Proceedings in the United States District Courts under 28 U.S.C. §2254.

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1 It is further ordered that Petitioner will have 45 days following service of
2 Respondents' answer in which to file a reply.

3 DATED THIS 22nd Day of October 2024.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

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5 MIRANDA M. DU
6 UNITED STATES DISTRICT JUDGE
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